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FILED FEB 3 10 10:00 AM

Not an Original Signature

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

13 BUSE TIMBER & SALES, INC., a) Civil No. CV 10-112-HA
Washington corporation,)
14)
Plaintiff,) DECLARATION OF RON SMITH IN
15) SUPPORT OF PROVISIONAL
v.) PROCESS
16)
NORTH PACIFIC GROUP, INC., an)
17 Oregon corporation, and EDWARD)
HOSTMANN, INC., Receiver,)
18)
Defendants.

19 I, Ron Smith, declare and state as follows:

20 1. I am the President and General Manager of Buse Timber &
21 Sales, Inc. I make this declaration based on my personal
22 knowledge. This declaration is made in support of plaintiff's
23 Motion for Provisional Process by Writ of Attachment on lumber
24 purchased from plaintiff during December 2009 and January 2010 by
25 defendants North Pacific Group, Inc., and Edward Hostmann, Inc.
26

1 2. Defendant North Pacific Group, Inc., is an Oregon
2 corporation, and defendant Edward Hostmann, Inc., is the court-
3 appointed receiver for North Pacific Group, Inc., under an Order
4 Appointing Receiver dated January 20, 2010 in Wells Fargo Capital
5 Finance, Inc. v. North Pacific Group, Inc., et al., Civ. No. 10-
6 cv-00065-ST.

7 3. Plaintiff's complaint is not based on a consumer
8 transaction, and provisional process is not sought against
9 consumer goods.

10 4. To the best of my knowledge, the part of the property
11 described above is located at the Baxter treating facility in
12 Eugene in Lane County and part of the property may also be located
13 in defendant North Pacific Group, Inc.'s facilities in Multnomah
14 county, Oregon. The value of the property in plaintiff's
15 estimation is \$105,000.00.

16 5. Plaintiff's claim to provisional process is based on the
17 attachment laws of the State of Oregon, particularly ORCP 84
18 A(2)(a). To the best of my knowledge, information, and belief,
19 this action is one in which provisional process may issue.

20 6. A copy of ten (10) invoices for the lumber sold in
21 December 2009 and January 2010 to defendant North Pacific Group,
22 Inc., is attached and marked as Exhibit "A" to the Complaint and
23 is by reference made part of this declaration. The invoices
24 evidence the source of plaintiff's claim. In addition, other
25 letters and commercial documentation exists to support plaintiff's
26 claim and attempts, without success, to be paid timely.

1 7. The property is not wrongfully detained by any person to
2 plaintiff's knowledge.

3 8. No part of the property has been taken by a public
4 authority for a tax, assessment, or fine to plaintiff's knowledge.

5 9. With the exception of the appointment of a receiver
6 authorizing defendant Edward Hostmann, Inc., to have legal custody
7 and control of defendant North Pacific Group, Inc., including
8 authority to make payments and disbursements necessary to ensure
9 continued operations of defendant North Pacific Group, Inc., no
10 part of the property is otherwise held under execution,
11 garnishment, or other legal or equitable process to plaintiff's
12 knowledge.

13 10. Plaintiff believes that there is a substantial danger
14 that defendants through other persons or their agents are
15 intending to transfer or otherwise dispose of or conceal this
16 personal property. Specially, plaintiff has learned that
17 defendants are immediately planning to ship the property overseas.
18 Defendants are planning to transfer the property out of state
19 without paying plaintiff. Despite repeated requests, defendants
20 refuse to pay the amount due.

21 11. Without restraint, defendants will attempt to transfer
22 the property to other purchasers, innocent or otherwise, and will
23 place the property beyond plaintiff's reach. Defendants have
24 inadequate other assets or resources to pay plaintiff's claim and
25 have been unwilling to pay the claim, although plaintiff has asked
26 them repeatedly to do so. If the assets and property listed above

1 are placed beyond plaintiff's reach, plaintiff will be unable to
2 collect the claim on which the complaint is based.

3 12. Plaintiff has an immediate need to obtain payment, as
4 these proceeds are critical for plaintiff's immediate and
5 continuing operations. The lumber industry is in the worst
6 condition in decades and the loss of the \$104,863.68 will
7 significantly harm our business.

8 13. There is no reasonable probability that defendants can
9 establish a successful defense to plaintiff's underlying claim,
10 and to plaintiff's knowledge, defendants have not asserted any
11 defense because there are none. This is a simple breach of
12 contract action in which defendants are plainly in default.

13 14. Defendant North Pacific Group, Inc., is indebted to
14 plaintiff in the sum of \$104,863.68 together with interest thereon
15 at the rate of 2% per month from the date of each outstanding
16 invoice, and for plaintiff's costs and disbursements incurred
17 herein, over and above all legal setoffs and counterclaims, on an
18 express or implied contract for the payment of money for goods
19 sold and delivered.

20 15. Payment for the sums owing has not been secured by any
21 lien, mortgage, or pledge on real or personal property.

22 16. The sum stated above, for which the attachment is asked,
23 is an actual bona fide amount due and owing from the defendants to
24 plaintiff, and the attachment is not sought, nor is the action
25 prosecuted, to hinder, delay, or defraud any creditor of
26 defendants.

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2 17. I declare under penalty of perjury, that the foregoing
3 is true and correct.

4 DATED this 2nd day of February, 2010.

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Ron Smith